

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6860

Petitions of Vermont Electric Power Company, Inc. and Green Mountain Power Corporation for a Certificate of Public Good authorizing VELCO to construct the so-called Northwest Vermont Reliability Project, said project to include: (1) upgrades at 12 existing VELCO and GMP substations located in Charlotte, Essex, Hartford, New Haven, North Ferrisburg, Poultney, Shelburne, South Burlington, Vergennes, West Rutland, Williamstown, and Williston, Vermont; (2) the construction of a new 345 kV transmission line from West Rutland to New Haven; (3) the construction of a 115 kV transmission line to replace a 34.5 kV and 46 kV transmission line from New Haven to South Burlington; and (4) the reconductoring of a 115 kV transmission line from Williamstown, to Barre, Vermont

PROPOSAL FOR DECISION OF  
THE VERMONT DEPARTMENT OF PUBLIC SERVICE  
ON WHETHER TO REOPEN THE PROCEEDING

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September 16, 2005

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On the issue of whether to reopen the proceeding based on the increased cost estimates noticed by the Vermont Electric Power Company, Inc. ("VELCO") on July 8, 2005, the Vermont Department of Public Service ("DPS" or the "Department") proposes that the Vermont Public Service Board ("PSB" or the "Board") find and conclude as stated below.

I. **Introduction**

In this decision, the Board determines whether to reopen this proceeding in light of the increased cost estimates about which the Board received notification from VELCO on July 8, 2005. Major points in this decision include:

- Reviewing the issue of whether to reopen under the standards of VRCP 60(b), we decline to exercise our discretion to set aside the judgment based on the strong potential for prejudice to the general good of the state from doing so, including but not limited to:
  - The risk to the provision of reliable electric service to Vermonters that would occur through delay in project construction. The VELCO system is rapidly approaching the critical 1,100 MW load level at which all elements of the NRP are needed (except for the expansion of a device at the Granite substation), and the increased cost estimates do not change our prior decision that alternative resource configurations ("ARC") cannot deliver the needed reliability in a timely manner.
  - The risk that Vermonters will bear increased costs if the NRP is delayed, including costs related to demobilization and storage of heavy and expensive equipment or cancellation of orders for such equipment. Vermonters also risk bearing the incremental increase in the cost of the project that appears likely to occur if we

reopen the proceeding and the inflationary trends driving the current increase continue to escalate while we revisit the project.

- While we hold that the “substantial change” test does not govern whether to reopen this proceeding, we alternatively conclude that, under the circumstances of this case, the increase in estimated costs does not have the potential for significant impacts under the Section 248 criteria. We do not believe in this case that the increase has the potential for such impacts because the ARCs cannot deliver the needed reliability in a timely manner. In addition, the magnitude of the increase is substantially mitigated by the strong likelihood that regional cost sharing will fund at least three-quarters, and possibly more, of the total project costs.
- We express our serious concern with the size of the increase and make clear that, in a given proceeding under § 248, a major change in the cost of a project can be grounds to reopen. Our decision today is based on the particular facts and circumstances of this case.

## II. **Procedural History**

In this docket, on January 28, 2005, the Board issued an order (the “Order”) and certificate of public good (“CPG”) to VELCO under 30 V.S.A. § 248 for the so-called Northwest Reliability Project (“NRP”). After the Board issued an order on March 11, 2005 on various post-decision motions, several parties appealed the CPG to the Vermont Supreme Court.

On July 8, 2005, VELCO provided notice to the Board of increased cost estimates. In a July 11, 2005 memorandum, the Board solicited comments from parties on the issue of seeking a remand from the Court for the purpose of reopening the proceeding. On or about July 14, 2005,

VELCO and Green Mountain Power Corporation ("GMP"), DPS, the Town of New Haven ("New Haven"), the Town of Shelburne ("Shelburne") and the Conservation Law Foundation ("CLF") filed comments on the issue of a remand.

DPS and New Haven subsequently filed motions for remand with the Court. On August 24, 2005, the Court remanded this case to the Board with the following instructions:

The remand is limited to allowing the Public Service Board to determine whether to reopen the proceedings below in light of the new cost information. The Board shall render its decision within thirty days of the date of this order, and the appeal will be put on waiting status during the remand period.

DPS sought the 30-day limitation on the remand granted by the Court because of the pressing reliability need previously found by the Board in this docket (Order of 1/28/05 at 5, 12), and the consequent necessity for a clear answer soon on whether this case will be reopened.

On receipt of the remand order, the Board provided an opportunity for parties to file initial legal memoranda, motions, reply memoranda, and requests for an evidentiary hearing. Multiple parties filed initial and reply memoranda. New Haven and CLF each filed motions to reopen. DPS and New Haven each requested an evidentiary hearing. The Board held oral argument on September 8, 2005. The Board held a hearing on September 12, 2005 to take evidence relevant to whether it should exercise its discretion to reopen this proceeding. The Board subsequently provided parties an opportunity to provide briefs and reply briefs. To the extent any findings proposed by parties are incorporated herein, they are granted; otherwise, they are denied.

### III. **Findings of Fact**

#### **Cost Estimates**

1. VELCO's cost estimate for the NRP filed with its original petition was approximately

\$120 million (excluding the Sand Bar facilities, which this Board approved in a separate docket). VELCO's so-called "reroute filing" added approximately \$1.2 million to the cost of its proposal. VELCO Exhibit TD-21; Smith and Litkovitz, supp. pf. at 6; Exhibit DPS-GS&WSL-1 at 1.

2. During the pre-CPG proceeding, DPS reviewed VELCO's cost estimates and determined that none of them was too high and that some of them were too low, understating the likely cost by approximately \$19 million. Smith, pf. at 15-17.
3. VELCO's original cost estimate included contingencies on direct costs of 5 percent on materials and 10 percent in materials. DPS-Cross-244-REM; 9/12/05 tr. at 157 (Pence). The same contingencies appear to have been used on indirect costs, although at hearing VELCO could not confirm this with certainty. 9/12/05 tr. at 157 (Dunn).
4. VELCO now estimates the cost of the NRP at \$198 million with a 15 percent contingency, or approximately \$228 million. VELCO-Remand-1 at 1. VELCO believes it appropriate now to use a 15 percent contingency on the project estimate due to changes in the marketplace that have occurred since the original estimate and the amount of materials involved with the NRP that are not presently under contract. 9/12/05 tr. at 164 (Dunn).

#### Discussion

Given that VELCO believes it necessary to apply a 15 percent contingency to its current estimate, the use of a \$198 million figure does not provide an accurate description of the possible cost of the NRP. Presenting the estimate as "\$198 million plus a contingency of fifteen percent" risks directing attention away from the potential additional \$30 million in project cost represented

by the contingency.<sup>1</sup> For this reason, in this decision we will consider the revised cost estimate to be \$228 million.

5. VELCO determined in December 2004 to develop its new estimates because at that time it expected the Board to issue a CPG for the NRP and impose conditions that would change the scope of the project and because it was seeing significant increases in costs on other projects in New England and Vermont. 9/12/05 tr. at 19 (Dunn).
6. VELCO engaged two estimating firms to prepare estimates independently based on engineering work performed by VELCO that was more detailed than the preliminary work done for the original estimate. The two independent estimates came within three percent of each other. 9/12/05 tr. at 24, 26-7, 30-1. (Dunn, Pence).

Drivers of the Increase

7. The reasons for the increase divide into three categories: (1) a high rate of inflation in the cost of materials, equipment and construction and engineering services since the time-frame of the original estimate, (2) changes in project scope made during the course of the regulatory process and refinement of engineering design since the filing, and (3) net increases in the needed quantity of such items as concrete and steel from the amounts anticipated at the time of the original estimate.<sup>2</sup> VELCO-Remand-1 at 2; VELCO-

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<sup>1</sup>In this regard, we note that VELCO felt the contingencies in the original estimate to be significant enough that they were included in the total estimated cost of the project, not presented as a possible adder. VELCO Exhibit TD-21; DPS-Cross-244-REM.

<sup>2</sup>In footnote 1 to a July 14, 2005 filing with the Board, VELCO asserted that this category of cost increases also included "subcontractors' profits" that had been omitted from the original estimate. On cross-examination, VELCO's witnesses were unable clearly to confirm or deny the  
(continued...)

Remand-3; 9/12/05 tr. at 33-4 (Pence).

8. One reason for the inflation in the cost of the project is the weakening of the US dollar as against other currencies between the second quarter of 2003 and the second quarter of 2005. Much of the equipment needed for the project, such as transformers and high voltage cable, is purchased off-shore. VELCO Remand-8; 9/12/05 tr. at 36-7 (Pence).
9. Another reason for inflation in the cost of the project is a significant rise in commodity and oil prices between the first quarter of 2003 and first quarter of 2005, affecting the price of materials used in project construction. VELCO-Remand-8.
10. A further reason for inflation in the cost of the project is competition for scarce resources (e.g., materials, personnel) from other transmission projects. The personnel resources available for such projects have diminished in recent years. There has been a major increase in transmission project construction across the nation since 2003. VELCO-Remand-8; 9/12/05 tr. at 36-8, 175-6 (Pence).
11. The inflation in project costs affects scope changes made during the regulatory process. For example, the estimated incremental cost of relocating the New Haven substation has increased from \$1.8 to 2.3 million as found by the Board to an estimated \$3 to 5 million. The cost of undergrounding also has been affected by the same cost inflation trends, perhaps even more than for overhead installation. The incremental cost of the undergrounding in Shelburne required by the Board is now estimated at \$7-8 million.

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<sup>2</sup>(...continued)  
accuracy of the assertion in this filing. 9/12/05 tr. at 179-82 (Pence, Dunn).

Order of 1/28/05 at 102; VELCO-Remand-5; VELCO-Remand-7; 9/12/05 tr. at 172-3, 178-9 (Pence).

Regional Cost-Sharing

12. Of the facilities subject to the new cost estimates, VELCO estimates that approximately \$212.3 million will be pool treatment facilities ("PTF") which are eligible for regional cost sharing, with Vermont paying its load ratio share of those facilities (approximately 4.1 percent). Of the remaining costs, approximately \$15.9 million would be non-PTF. VELCO Remand-5, with all figures adjusted upward by 15 percent to account for the contingency on the estimate (9/12/05 tr. at 236, LaForest); 9/12/05 tr. at 242 (LaForest).
13. For several of the PTF facilities, a portion of their cost may be deemed localized PTF, that is, PTF which is not subject to regional cost-sharing. These facilities are 115 kV undergrounding in Shelburne and, if required by the Board, Charlotte; relocating the New Haven substation; redesigning the Granite substation; relocating the Vergennes substation, and the 345 kV re-route in West Salisbury. Accounting for the 15 percent contingency, the estimated cost of these facilities is roughly \$33.3 million. Of these facilities, VELCO's prognosis is that the 115 kV undergrounding will be a localized cost and the Granite redesign will be subject to regional cost sharing, with the remaining facilities indeterminate. VELCO-Remand-5; 9/12/05 tr. at 83, 235-6 (LaForest).
14. VELCO is "pretty confident" that the remaining amount of PTF facilities, totaling an estimated \$179 million (accounting for the 15 percent contingency), will be subject to regional cost sharing. VELCO believes that regional cost sharing of the amount for these

facilities is “not at all at risk.” 9/12/05 tr. at 234-6 (LaForest).

15. VELCO has not submitted revised cost estimates for the NRP to ISO-NE, and the ISO-NE has not approved any such estimates for regional cost sharing. 9/12/05 tr. at 104 (Rourke), 82, 237-8 (LaForest). In reviewing a revised application, the ISO-NE is most likely to take a hard look at the “potential localized PTF” amounts shown on VELCO-Remand-5, but assures the Board that the full scope of the project is not at risk. 9/12/05 tr. at 104-05, 138-39 (Rourke).

#### Discussion

Two points concerning these findings are worthy of discussion. First, based on them, it appears that the maximum possible exposure to Vermont ratepayers for costs of the NRP is approximately \$56.5 million (\$15.9 million in non-PTF, \$33.3 million in potential localized PTF, \$7.3 million in load ratio share of remaining \$179 million in PTF). While this would be a significant increase in the amount of the project that is paid for by Vermont, in excess of three-quarters of the project costs still will be paid for by New England, and possibly more. In addition, a significant portion of the “potential localized PTF” relates to requirements we imposed to meet the § 248(b) criteria, for which there was no certainty of regional cost-sharing at the time we imposed them.

Second, in reaching our decision today not to reopen, we are relying on VELCO's assessment of the likelihood of regional cost sharing for the remainder of the project costs. VELCO bears the responsibility for the accuracy of this assessment. We also expect VELCO vigorously to advocate to the ISO-NE for regional cost sharing of the potentially localized PTF,

with the exception of the undergrounding costs, for which we expect VELCO to ask for the same treatment as is afforded burial for projects on the ISO-NE transmission grid.

Alternatives

16. The market factors affecting the cost of the NRP would affect all transmission-only alternatives to the NRP, including those examined previously in this docket, the costs of which would be expected to rise at roughly the same rate as the increase in the costs of the NRP. 9/12/05 tr. at 91-2, 230-31 (LaForest).
17. VELCO caused La Capra Associates to re-evaluate, using current cost estimates, the ARCs considered during the original proceeding. The results show ARCs 4 and 5 to be more cost-effective on a societal basis than the NRP, and to have substantially higher carrying charges and costs to Vermont than the NRP. VELCO-Remand-2 at 2-3.
18. The revised alternatives analysis assumes new combustion turbines ("CT") are on-line in Northwest Vermont by 2008 and a new combined cycle facility ("CC") by 2010. VELCO-Remand-2 at 27.
19. No party placed in evidence, or offered to place in evidence, any testimony showing that the new cost estimates for the NRP somehow allow the ARCs to be implemented by 2006, the critical date on which the Board found the 1,100 MW summer peak load level will be reached, and all NRP facilities will be needed except the expansion of a device at Granite. 9/8/05 and 9/12/05 trs. generally; Order of 1/28/05 at 28, 35-6.
20. The alternatives analysis benefits ARCs 4 and 5 by assuming full implementation of LICAP as it was contemplated at the time the analysis was completed. This assumption is

inappropriate given the ongoing challenges to LICAP and a recent order suspending implementation of the program. If there were a long-term delay, different program structure, or other change in LICAP that tended to produce a lower market value for capacity in the region, then ARCs 4 and 5 would tend to look more costly than the NRP. 9/12/05 tr. at 268-9 (Smith).

21. The alternatives analysis also does not account for the possibility that Vermont might need to purchase resources between 2006 and the 2008/2010 assumed in-service dates for the CTs and CC. Therefore, in evaluating ARCs 4 and 5, the analysis fails to include any costs associated with purchasing such resources. 9/12/05 tr. at 265-8 (Smith).
22. While there has been a short-term spike in the fuel prices assumed in the alternatives analysis, this spike will not have a significant impact on the analysis over the long-term. Previous work performed by La Capra Associates suggests that higher fuel prices would improve the economic performance of the NRP as compared to alternatives, because of the effect on the gas generators that are part of the ARCs. 9/12/05 tr. at 271-3 (Smith).
23. While a short-term spike in fuel prices would briefly increase the value of costs avoided by demand-side management measures, under the alternatives analysis the cumulative DSM benefits are small in the short-term and do not reach significant levels until the later years of implementation. 9/12/05 tr. at 272 (Smith); VELCO-Remand-2 at 18.

*Recent System Peaks*

24. Since the Order was issued, the VELCO system has experienced a winter peak of 1,086 MW and a summer peak of 1,073 MW. VELCO-Remand-6 at 3.

25. The load forecast used in the pre-CPG proceeding predicted a summer peak in 2005 of 1073.3 MW. 9/12/05 tr. at 28 (Dunn).
26. The timely construction of upgrades in New Hampshire was an important basis for the Board's determination that the 345 kV line was needed at an 1,100 MW load level. Those upgrades have been delayed, which means that the 345 kV line is needed now. Order of 1/28/05 at 28, 35-6; 9/12/05 tr. at 81 (LaForest); VELCO Exhibit Planning-6 at 6.

*Prejudice from Reopening*

27. The NRP is a complex, ongoing construction project, for which VELCO has developed a tightly integrated schedule and mobilized significant internal and external personnel and material resources. To date, VELCO has committed approximately \$30 million for engineering services, construction services, and procurement of equipment. 9/12/05 tr. at 16-7 (Dunn), 61-3 (Bowers).
28. Direct operating impacts of reopening would be a partial or total work stoppage, which would have ripple effects to the rest of the project, including potentially demobilization of resources that would later have to be remobilized. 9/12/05 tr. at 63 (Bowers).
29. Delay resulting from reopening the proceeding is not a one-to-one relationship in terms of time. A one or two month period for reopening could result in a three to six month delay in the project. This is due to the potential for demobilization and remobilization, the need for time for new people to learn the project, delays in fabrication cycles, and missed opportunities to coordinate with ISO-NE outage schedules. Further opportunities to coordinate with ISO-NE outages may not re-occur for many months, rendering VELCO

- unable to place equipment in service for a longer period. 9/12/05 tr. at 64, 66-7 (Bowers).
30. Loss of the construction season due to advent of winter would have a particularly dramatic and negative impact on the project schedule and cost. 9/12/05 tr. at 65 (Bowers).
31. The project involves large equipment such as transformers which require long lead times in ordering. VELCO would incur penalties if it had to cancel contracts for such equipment, which penalties would increase depending on the stage at which the cancellation occurs (i.e., item just ordered, engineering completed, raw materials ordered, item manufactured). Transformers are typically unique and not easy to re-sell. 9/12/05 tr. at 18 (Dunn), 214-5 (Pence).
32. Delay for reopening could lead to double handling of large equipment, including but not necessarily limited to transformers in excess of 200 tons. If VELCO cannot complete construction of the foundation site and the transformers are scheduled for delivery, the transformers will have to be set in temporary locations (which would have to be found for them), weather protected, and secured. VELCO would later have to remobilize crews, cranes, and transport to set the transformers at the permanent locations. All of this would occur at significant cost. 9/12/05 tr. at 67-9 (Bowers).
33. VELCO would have to pay any costs incurred as a result of reopening, such as personnel and equipment cancellation costs. VELCO would likely pass those costs on to its owners, the Vermont distribution utilities, who in turn would seek to pass them on to their

ratepayers. 9/12/05 tr. at 184 (Dunn).<sup>3</sup>

34. If the Board were to reopen the proceeding and conclude it after several months, the cost of the NRP would likely be substantially higher than the current estimate, because the factors that have driven the current estimate higher are likely to continue during that period. 9/12/05 tr. at 244-5 (Bowers).
35. If the costs of the NRP increased because of the reopening of the proceeding, there would be significant issues with ISO-NE, which likely would decline to qualify the cost increment caused by the reopening for regional cost sharing. 9/12/05 tr. at 245-6 (LaForest).
36. If the project is delayed due to reopening, more load within Vermont will be exposed potentially to a greater number of outages that have adverse reliability consequences to the state and, possibly, to the region as a whole. Based on recent load trends, the VELCO system peaks are just shy of the 1,100 MW load level indicated in the critical load analysis. As load grows and the transmission infrastructure does not change, the stress on the infrastructure is increased. 9/12/05 tr. at 72 (LaForest).
37. Existing thermal generating units provide some assistance in covering an outage at Highgate, but the days on which those units might be called upon has increased from about 24 to 72 days. Thus, if the project is delayed due to reopening, and those units are unavailable or unable to perform during an extended outage, VELCO would be arming its

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<sup>3</sup>We make no determination in this order whether we allow those costs in rates, since that judgment must await a rate case in which their recovery is requested. Our finding is that there is a risk that ratepayers may bear these costs if incurred.

under voltage load-shedding scheme in the City of Burlington. To protect its system, VELCO is expanding that scheme to cover approximately half the state's load. Once that scheme is armed, load will be dropped from the system if relays see the requisite voltage drops. The amount of load shed could be as much as 150 to 250 MW, spread around the state. 9/12/05 tr. at 73-4 (LaForest).

#### IV. Conclusions of Law

The Board will discuss and decide the applicability of the legal standards advanced by the parties, and then apply the standard determined to be appropriate.

##### A. Legal Standards Advanced by the Parties

##### 1. VRCP 60(b) (Relief from Judgment)

VELCO, DPS, and New Haven all contend that VRCP 60(b) is applicable to whether to reopen this proceeding. The Board agrees that this rule applies. VRCP 60(b) is made applicable to Board proceedings by PSB Rule 2.221. Its subject matter is logically applicable to "reopening" because it concerns relief from judgment or order.

A decision to reopen under VRCP 60(b) is discretionary with the tribunal. Lyddy v. Lyddy, 173 Vt. 493, 497 (2001). In considering whether to reopen under the rule, the tribunal may consider the prejudice that would arise from setting aside the judgment. Teamsters, Chauffers, Warehousemen, and Helpers Union Local No. 59 v. Superline Transport. Co., 953 F. 2d 17, 20 (1<sup>st</sup> Cir. 1992); Home Port Rentals, Inc. v. Ruben, 957 F.2d 126, 132 (4<sup>th</sup> Cir. 1992).<sup>4</sup> In addition, as a

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<sup>4</sup>These cases are decisions under FRCP 60(b). Decisions under that rule are relevant precedent in applying VRCP 60(b) because the state's rule is "substantially identical to Federal (continued...)"

precondition to granting relief under the rule, a movant must show the reviewing court as a threshold condition that it has a meritorious claim – i.e., that vacating the judgment “will not be an empty exercise.” Teamsters, 953 F.2d at 20.

In their filings, parties have discussed the potential applicability of three subsections of VRCP 60(b). The Board will summarize each of these in turn.

VRCP 60(b)(2) allows reopening within one year on the basis of “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).” Under VRCP 60(b)(2), the Board previously has applied a standard that the evidence must be “ ‘of such a material and controlling nature as will probably change the outcome.’ ” In re Petition of Ryegate Wood Energy Co., Docket No. 5217, Order of 11/30/90 at 5, quoting Moore’s Federal Practice § 60.23[4] (2d ed. 1990). This standard is consistent with that applied by the federal courts. See, e.g., U.S. v. Int’l Brotherhood of Teamsters, 247 F.3d 370, 392 (2d Cir. 2001); Hoult v. Hoult, 57 F.3d 1, 6 (1995), cert. den. 527 U.S. 1022 (1999).

VRCP 60(b)(3) allows the Board, within one year, to relieve a party from a final judgment, order or proceeding based on “fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party.” A party seeking such relief must demonstrate fraud, misrepresentation, or misconduct “by clear and convincing evidence.” Gavala v. Claassen, 2003 VT 16 ¶ 5, 175 Vt. 487 (2003). The purpose of the rule is to protect the fairness and integrity of the litigation process. Lonsdorf v. Seefeldt, 47 F.3d 893, 898 (7<sup>th</sup> Cir. 1995).

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<sup>4</sup>(...continued)  
Rule 60.” Reporter’s Notes, VRCP 60.

While it is not necessary to show that the alleged misconduct would change the outcome of the case, the movant must show clearly and convincingly that the misconduct prevented it from fully and fairly presenting his or her case at trial. Anderson v. Cryovac, 862 F.2d 910, 923, 924 n.10 (1<sup>st</sup> Cir. 1988); Karak v. Bursaw Oil Corp., 288 F.3d 15, 21 (1<sup>st</sup> Cir. 2002).

VRCP 60(b)(6) allows reopening “for any other reason justifying relief from the operation of the judgment.” The rule “may be invoked only when a ground justifying relief is not encompassed within any of the first five subsections of” VRCP 60(b). Olde & Co. v. Boudreau, 150 Vt. 321, 323 (1988). The rule is to be applied “liberally to prevent hardship or injustice,” and beyond such instances, in “extraordinary circumstances.” Id. at 324.

## 2. Act 250's Substantial Change Test

CLF and New Haven urge the Board to apply the “substantial change” test developed by the former Environmental Board under 10 V.S.A. Chapter 151 (“Act 250”). VELCO blanketly opposes application of this test. DPS believes that the Board should not apply the test in this case but should state prospectively that it will apply the test to future cost changes in projects approved under § 248.

Act 250's substantial change test applies to whether a permit or permit amendment is required. 10 V.S.A. § 6081(b), Environmental Board Rules (“EBR”) 34(A). In the case of In re Citizens Utilities Company, 179 P.U.R. 4<sup>th</sup> 16 (Vt. 1997), we adopted this test for the purpose of determining whether an amendment to a § 248 CPG was required for design changes in a project, stating that “Act 250's substantial change test provides us and parties with useful guidance for when changes to a certificated project require an amended certificate.” Id. at 94. As we stated in

that case, the test requires two determinations: first, whether there has been a change, and second, whether the change has the potential for significant impacts under the Section 248 criteria. Id. at 94-5.

The Supreme Court has held that, to meet the substantial change test, it is not enough to show potential impact on the statutory criteria; instead, the Court held it essential to the validity of the test that the potential for *significant* impact must be shown. In re Barlow, 160 Vt. 513, 522 (1993).

Under Act 250 case law, the substantial change test is limited to physical changes in a project. Secretary v. Earth Construction, Inc., 165 Vt. 160, 164 (1996); In re H.A. Manosh Corp., 147 Vt. 367, 370 (1986). When we adopted Act 250's substantial change test in our Citizens ruling, we did not address whether or not we were carrying this limitation forward to our proceedings, nor have we previously applied Act 250's substantial change test to require an amendment to a § 248 CPG for any type of change except a design change. See, e.g., In re Petition of Vermont Electric Cooperative, Docket No. 6544, Order of 2/20/02 at 6-7; Citizens, 179 P.U.R. 4<sup>th</sup> at 94-5 (both cases applying the test to design changes).

For two reasons, the Board declines to apply the Act 250 "substantial change" test to determine whether to reopen this proceeding. First, the test is not within the scope of the Court's remand order because it does not truly apply to "reopening" a proceeding. The test is not about setting aside a final judgment. Instead, it is about whether a permit amendment is required for a change in a project. Even if an affirmative judgment is reached under the test, the earlier permit remains valid for the project approved therein.

Second, we agree with the Department that we should not apply the test in this case because we have not given clear notice to the utilities that we will require a permit for any changes in a § 248 project except design changes. In this regard, we are exercising our discretion based on considerations of fairness, and not based on some mechanical application of case law regarding the prospective operation of rulings, as New Haven would have us do. We also reject New Haven's characterization of the Department's argument as applying "only when some criteria are affected." New Haven's Reply Memorandum Regarding Reopening Proceedings at 7. DPS does not argue that only some of the § 248 criteria should be used in applying the substantial change test. The Department's argument on whether to apply the test in this case concerns the type of *changes* to which the test has previously been applied, not which criteria are applied in using the test.<sup>5</sup>

We want to be clear that our ruling is not to apply the "substantial change" test in this particular case for the reasons stated above. Below, we make an alternative ruling that applies this test and, in so doing, provide clear notice that we did not, when we adopted the test in the Citizens case, intend to adopt Act 250's limitation of the test to physical changes.

3. Board Rule 2.204(G) (Amendments to Filings)

New Haven argues that Board Rule 2.204(G) applies to whether to reopen this proceeding. The Board disagrees. Board Rule 2.204(G)(1) governs "proposed amendments to any filing" in a

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<sup>5</sup>We further note that New Haven inadvertently corroborates the Department's argument when it claims that the point of the Citizens ruling "was to conform to the Environmental Board's analysis." Id. at 7. As demonstrated above, that analysis *is* limited to physical changes, and a utility which thought we were conforming to the Environmental Board's analysis might well believe we meant to include that limitation.

proceeding. It does not govern whether to relieve a party from judgment or whether a change in a permitted project requires an amendment. The language of the rule is geared toward the issues of whether an amendment to a filing will delay the proceeding or adversely affect the rights of a party. Once a final order is issued in a proceeding, there is no *proceeding* to delay, and the rights of the parties have been determined. The question before us is not whether to allow an amendment to a filing, but whether to reopen a final order.

Because Rule 2.204(G) does not apply, any prior cases under that rule cited by New Haven likewise do not apply to this case. In this regard, New Haven cites a case under Board Rule 2.204(G) in an attempt to prove that we have applied the Act 250 “substantial change” test to non-physical changes in a project, based on the occurrence of the words “substantial change” in the phrase “substantial change in a filing” at the end of Board Rule 2.204(G)(1). New Haven’s Reply Memorandum Regarding Reopening Proceedings at 7-8. The cited order concerns new testimony offered by a petitioner prior to final judgment. In re Petition of Entergy Nuclear, Docket No. 6812, Orders of 10/7/03 at 1, 13-14. The coincidence of the “substantial change” language is not determinative. A ruling that testimony offered prior to decision is a substantial change *in a filing* does not provide clear notice of what changes *in a project* require an amendment to a CPG that has been issued under § 248.<sup>6</sup>

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<sup>6</sup>Another order cited by New Haven on this point is our order of May 28, 2004 on motions for reconsideration in the same Docket No. 6812. However, the words “substantial change” are not even present in that order.

B. Application of Legal Standards

1. VRCP 60(b) (Relief from Judgment)

Under VRCP 60(b), the Board makes separate and independent rulings on whether to reopen. To begin with, based on the evidence at hearing, we decline to exercise our discretion to reopen this proceeding due to the likelihood of substantial prejudice to the general good of the state from setting aside the judgment rendered in the Order.

Next, we address VRCP 60(b)(2), (3), and (6) specifically and make two separate rulings. First, setting aside the evidence taken at the hearing, we decline to reopen because those parties asking us to reopen the judgment have failed to persuade us that they have a meritorious claim. Second, when we take that evidence into account, it confirms the lack of a meritorious claim.

a. Balancing Prejudice from Reopening with Other Factors

We agree with the Department that risk of substantial prejudice to general good of the state<sup>7</sup> outweighs the benefits of reopening the Order.

The evidence before us reveals a substantial risk to the provision of reliable electric service to Vermonters if we reopen the order and thereby delay construction of the NRP. This year the VELCO system set a new winter peak of 1,086 MW and a new summer peak 1,073 MW. These numbers are perilously close to the 1,100 MW load level at which all parts of the NRP are needed except the expansion of the Granite dynamic reactive device, and tend to confirm our

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<sup>7</sup>Under 30 V.S.A. § 248(a), we may not issue a CPG unless we find that a project will “promote the general good of the state.” In In re Application of Twenty-four Electric Utilities, Order of 9/21/89 at 7-8, we concluded that this subsection provides us with authority, separate from 30 V.S.A. § 248(b), to consider any issues pertaining to a § 248 project which may materially affect the general good of Vermont.

finding that Vermont is likely to reach the 1,100 MW load level next summer. Order of 1/28/05 at 28, 35-6. Moreover, as found above, the 345 kV line's being needed at 1,100 MW was predicated on system improvements in New Hampshire that have not occurred; in the absence of those improvements, the 345 kV line is needed today.

Project delay also risks continued escalation of project costs. The evidence shows that the upward trends in costs that drive VELCO's current cost estimate are likely to continue during the several months that a reopened proceeding is likely to take. Given that we have already decided that the ARCs could not be implemented in a timely manner (Order of 1/28/05 at 52-3), this continued upward trend makes highly probable that the result of revisiting the NRP would be a decision several months down the road that reaffirms the project but the price tag has risen even more. The evidence further shows that, in such a situation, Vermont is likely to bear the resulting increment of cost increase.

The evidence further shows other potential prejudice to the general good of the state from reopening, including:

- Delay of several months or more in the schedule for project completion because of loss of the current construction season due to the advent of winter and the expense of winter construction, and missed opportunities for coordinating construction work with scheduled ISO-NE outages. In this regard, we find VELCO's evidence persuasive that, because of these eventualities, the length of project delay caused by reopening is likely to be greater than, rather than equal to, the length of the reopened proceeding. In other words, a one- or two-month reopened proceeding

could result in a three- to six-month delay.

- VELCO's substantial mobilization to implement the NRP may be negatively affected, with consequent impact on costs and the ability to retain the necessary personnel in the future. A pause in project implementation while it is being revisited could result in loss of contractors to other jobs or significant expenditure to retain them while VELCO waits for a decision. The same contractors may not be available for rehire should the Board reaffirm its decision. With competition from other transmission projects it may be difficult for VELCO to find contractors to do the work during the necessary time frame and, if it does, the additional cost increment may be significant.
- If the proceeding is reopened, VELCO may have to store, and handle twice, expensive large equipment, and incur the resulting costs, have to delay or cancel orders for expensive equipment, or risk having to pay for equipment that ultimately is not used because the Board changes the project.
- Vermont ratepayers risk bearing the costs associated with project delay due to reopening.<sup>8</sup>

The foregoing risks to reliability and of increased cost outweigh those factors which support exercising our discretion to reopen. The first such factor is the magnitude of the current increase in estimated costs for the NRP, which is \$100 million. This is a serious increase about

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<sup>8</sup>Again, we are not here ruling on actual recovery of such costs, since that will be subject to review in a rate-setting proceeding. Instead, we note the risk to Vermont ratepayers.

which we are deeply concerned. The magnitude of the increase, however, is mitigated by the following: (a) the region is likely to pay at least three-quarters of the total cost of the project, and possibly more; (b) since some of the increase results from requirements we imposed, we knew that the project cost would have to rise at least to cover those items; (c) much of the increase stems from factors beyond VELCO's control, and (d) Vermont faces a serious reliability exposure and none of the ARCs can meet the need in time.

The second such factor is assuring that we based our statutory findings under § 248(b)(2) and (4) on reasonably reliable cost estimates. In this connection, we disagree with VELCO's apparent assertion that the Supreme Court has rejected such a goal. VELCO's argument seems to be that the reliability of a cost estimate increases with the finality of a design and that the Court has held that we have the discretion, under § 248, to approve a conceptual design subject to post-certification review. VELCO's Reply Memorandum of 9/6/05 at 6, citing In re Petition of VELCO, 131 Vt. 427, 434-5 (1973). The fact that we have the discretion to employ a procedure is not a mandate that we must use it. In addition, our decisions under § 248 are in danger of being unsound if they are based on cost estimates that are so conceptual that they are subject to wide variation.

While we disagree with VELCO's legal argument, we nonetheless conclude that the goal of assuring better cost estimates does not outweigh the risks described above to reliability and the ratepayers of the state. There are other ways besides reopening this case to assure better cost estimates on a going forward basis, including investigating the issue in planning dockets such as the ongoing docket no. 7081 and addressing it when issuing future CPGs to VELCO.

The third factor favoring reopening is the importance of controlling utility costs, which ultimately may affect the electric rates paid by Vermonters. In this respect, we reject VELCO's argument that this goal is irrelevant to § 248 proceedings. VELCO bases its argument on the Department's withdrawal of a comparative rate impact assessment performed by its staff regarding the NRP and the ARCs, and on language from our decision stating that, in order to approve the project, we do not have to engage in a "head-to-head" comparison of its economic benefits with those of alternatives. VELCO's Reply Memorandum of 9/6/05 at 3-4, citing the Order of 1/28/05 at 184-85.

VELCO is seriously mistaken if it believes the goal of controlling utility costs is disclaimed by the withdrawal of a comparative rate impact analysis among options or a decision not to require a comparative economic benefits analysis among those options. The question at hand is controlling the costs of an approved project, not simply comparing its impacts to alternatives. Consideration of the costs of an approved project is relevant under § 248(b)(2) (need) and (4) (economic benefit), as well as to the general good of the state under § 248(a).

But though we affirm controlling utility costs as a legitimate goal under § 248, we do not consider it weighty enough in this instance to warrant reopening the proceeding. Given the likelihood that further review would expose Vermonters to reliability risks and, at the end of such review, the NRP cost estimate would probably be even more than it is today, reopening the project would be more likely to frustrate this goal rather than promote it.

Instead, to support the goal of controlling utility costs going forward, we make clear today that an increase in the costs of a § 248 project can be grounds for reopening the proceeding, and

that such decisions will be made on a case-by-case basis as they arise. In this regard, the Board notes that the ISO-NE reserves the right to revisit regional funding for a project if the scope changes or the costs increase significantly, and since Vermonters must pay all or a portion of the costs of § 248 projects, it is entirely reasonable for the Board to retain the same or similar right.

In addition, in future § 248 proceedings involving VELCO, we may consider prior to issuing a CPG whether to impose permit conditions that set ceiling amounts on total project expenditures beyond which a CPG amendment is needed or require further review of project costs during post-certification proceedings as designs become more final, or other measures designed to provide a level of control over project costs.

b. VRCP 60(b)(2) (Newly Discovered Evidence)

Separately from our decision above not to reopen under VRCP 60(b) due to the potential for prejudice to the general good of the state, we decline to reopen under VRCP 60(b)(2) for two independent reasons.

(1) Lack of Meritorious Claim

Our first reason is that, disregarding the evidence adduced at the technical hearing on September 12, 2005, none of the parties favoring reopening has met the burden to show a meritorious claim under VRCP 60(b)(2). In this regard, they have put forward no persuasive argument that the new cost estimates have any effect on key determinations made by the Board under § 248(b)(2) (need) and (4) (economic benefit) that had a controlling impact on the outcome.

For example, the increased cost estimates do not affect our determination in the Order of the reliability standards that Vermont should meet. Specifically, the Order's findings and

conclusions with respect to § 248(b)(2) (need) stated that the so-called “N-2” and “resource adequacy” standards are the appropriate standards “for ensuring Vermonters ‘reasonably adequate’ electric service now and in the future.” Id. at 19. In reaching this conclusion, we focused not on the cost of achieving those standards, but rather based our decision on two independent rationales: (a) at various levels of oversight, Vermont is expected to meet those standards and (b) the importance of reliable electric power to a Vermont economy and society that are increasingly dependent on electricity, coupled with the fact that Vermont is served by far fewer lines than other areas of the country, which provides less operational flexibility to manage and recover from outages. Id. at 17-18. These factors remain true even with the increased cost estimates, and therefore Vermont needs to move forward to meet the reliability standards.

Also, no party has persuaded us that the increased cost estimates could somehow change our prior determination in the Order that the ARCs cannot meet the reliability standards in a timely manner. In this regard, the Order’s findings and conclusions on need state that the NRP “is the least-cost alternative that has fewer implementation hurdles and therefore can be in service before peak demand reaches the 1,100 MW level.” Id. at 57. In reaching this conclusion, the Order emphasized that “[n]o other proposal in this case, including the generation, energy efficiency, and load response measures included in the various ARCs, can meet the expected need for service with an appropriate level of reliability in a timely manner.” Id. at 52. The Order stated that the Board’s decision was “influenced by the time constraints VELCO is operating under to improve the reliability of the bulk power system,” stressing the existing net power deficit of 64 MW in northwest Vermont that is expected to increase to 135 MW in 2008, exposing Vermonters “to more

outage-related risks than we find to be acceptable.” Id. at 52-3. In rejecting an ARC that was estimated to be more cost-effective on a societal basis, we determined that there was “no reasonable likelihood” that the generation component of that alternative, three 40-MW generating stations, could be implemented within the necessary time frame. Id. at 53. The Order thus concluded that the NRP is needed now to address a serious problem. Id. at 5, 12. The new cost estimates may increase the societal cost-effectiveness of some ARCs when compared to the NRP, but they do not create more time or reduce other barriers to implementing the ARCs.

Similarly, under 30 V.S.A. § 248(b)(4) (economic benefit), the Order determined that the NRP will increase reliability and therefore “reduce potential economic and safety to risks associated with wide-spread loss of power in Northwest Vermont.” Id. at 180. The Order stated:

[The NRP] is the most economic solution with the least number of implementation hurdles that can be placed into service in a timely manner. Conversely, doing nothing to correct for observed signs of reliability deficiencies at current peak load levels is neither sound regulatory policy nor likely to result in anything but negative economic consequences.

Id. at 180-81.

In the face of these difficult hurdles, the best that those favoring reopening have put forward is New Haven’s argument that transmission-only alternatives should be reconsidered. Yet implicit in that argument is the assumption that the cost of those alternatives remains the same as it was in 2003. Even absent any evidence on the subject, New Haven offers no persuasive reason why we should make that assumption.

In addition, we rejected the transmission-only alternatives now advanced by New Haven for many reasons not related to capital costs, and these reasons would not be affected by an

increase in the estimated capital cost of the NRP. Order of 1/28/05 at 39-42.

We also note that, in its zeal to press for reopening, New Haven mischaracterizes the state of the existing record (developed prior to the CPG) concerning one of those reasons, namely, the possibility that a 345 kV line might be needed in the future in the New Haven to Williston corridor, and that therefore a 115 kV line built now in the West Rutland to New Haven corridor might have to be torn down and replaced by 345 kV. Order of 1/28/05 at 41. New Haven claims that this record shows that a 345 kV line from New Haven to Williston would be needed in “twenty plus” years. Motion and Memorandum by Town of New Haven Re: Reopening of Proceedings at 5 (Sep. 1, 2005). New Haven bases this claim on the testimony of witness George Smith who stated that he was “not the load forecaster” and indicated he was not certain he could remember when the requisite load level for that line would be reached. 3/5/04 tr. at 242-3 (Smith).

Other evidence demonstrated a likely need for a 345 kV line in the New Haven to Williston corridor at a 1400 MW load level, and earlier if certain other upgrades are not completed. DPS-Cross-7, attaching Northwest Reliability Project 1250 to 1540 MW Study at 6. These other upgrades require the involvement of jurisdictions outside Vermont. Id. They may not materialize and, if they do not, the 345 kV line from New Haven to Williston would be needed at a lower load level. Id.

This means that the result of building a 115 kV line in 2007 instead of 345 kV line from West Rutland to New Haven could well be tearing down and rebuilding that line after 13 years or less, with consequent loss of millions of dollars in sunk costs. As we found in the Order, the 1400

MW VELCO system load level is predicted to be reached in 2020. Order of 1/28/05 at 28.

In fact, the rebuilding of such a line could occur after only eight years, assuming installation of the second 115 kV line in 2007. Just after the very passage of Mr. Smith's testimony cited by New Haven, Mr. Smith states that a 345 kV line in the New Haven to Williston corridor could be needed as early as a 1300 MW load level, which we found could be reached in 2015. 3/5/04 tr. at 243-4 (Smith); Order of 1/28/05 at 28.

(2) Confirmation by Evidence at 9/12/05 Hearing

Our second and separate reason for declining to reopen under § 248(b)(2) is that the evidence presented to us on September 12, 2005 confirms that the parties favoring reopening are not likely to succeed in changing the outcome if we reopen. In this respect, no party presented or even offered to present any evidence that would show that the increased cost estimates for the NRP somehow enable the ARCs to be implemented in a timely manner.

Further, while the revised comparative analysis that *was* presented on the ARCs tends to show ARCs 4 and 5 as being more cost-effective than the NRP, these conclusions are based on assumptions that we do not accept. For example, the analysis assumes full implementation of the LICAP program, with the increased revenue to generation facilities through LICAP payments being the major reason for the cost-effectiveness of ARCs 4 and 5 as against the NRP. We do not agree with this assumption when the implementation of LICAP has been suspended and the program is under serious challenge.

Similarly, the alternatives analysis contains no costs for purchasing temporary resources to meet the reliability gap that would exist between now and the assumed implementation of CTs in

2008 and a CC in 2010. While the need for purchasing such resources is not certain, the reliability needs are so pressing that we cannot accept assuming a zero value for the cost of those resources during the "gap" period.

In addition, the evidence presented on transmission-only alternatives is that the cost for all such alternatives has risen at roughly the same rate as the costs of the NRP. Thus, the increased costs of the NRP provide no reason for reopening the proceeding to revisit those alternatives in detail.

Finally, VELCO and ISO-NE presented evidence supporting the likelihood that at least three-quarters of the project costs, and possibly more, will be funded regionally. This evidence tends to confirm that reopening to consider the increased cost estimates will not have a material effect on our conclusions under § 248(b)(2) that the NRP provides economic benefit to the state and its residents, and under § 248(a) that the NRP will promote the general good of the state.

c. VRCP 60(b)(3) (Fraud, Misrepresentation, Misconduct)

Separately from our decision above not to reopen under VRCP 60(b) due to the potential for prejudice to the general good of the state, we decline to reopen under VRCP 60(b)(3) for two independent reasons.

First, disregarding the evidence from the September 12 hearing, we are not persuaded that New Haven has a meritorious claim under VRCP 60(b)(3). New Haven's allegations are conclusory and unsupported by any reference to alleged evidence that would clearly and convincingly show fraud, misrepresentation, or misconduct, or that any such effect deprived New Haven of fully and fairly litigating this case.

Second, the evidence adduced at the September 12, 2005 hearing suggests that the increased cost estimates result from national and global market trends that are outside VELCO's control and which first became clearly evident late in 2004, well after the main evidentiary hearings in this docket had concluded. Under such circumstances, we decline to exercise our discretion to reopen under VRCP 60(b)(3).

d. VRCP 60(b)(6) (Catch-all Provision)

We decline to reopen under VRCP 60(b)(6) for two independent reasons, the first of which is separate from our decision above not to reopen under VRCP 60(b) due to the potential for prejudice to the general good of the state.

First, VRCP 60(b)(6) does not apply because the grounds for relief from judgment in this case are potentially encompassed in VRCP 60(b)(2) (newly discovered evidence) and (3) (fraud, misrepresentation or misconduct). As stated above, this subsection of VRCP 60(b) applies only if the grounds for relief are not potentially encompassed in one of the rule's first five subsections.

Second, even if we were to apply this rule, we would decline to reopen for the same reasons that lead to our decision above not to reopen under VRCP 60(b) due to the potential for prejudice to the general good of the state.

2. Act 250's Substantial Change Test

Earlier in this decision, the Board ruled that Act 250's substantial change test should not be applied in this proceeding. In the alternative, the Board determines below that the increased cost estimate does not constitute a "substantial change" within the meaning of that test because, under the particular circumstances of this case, it does not have the potential for significant impacts

under the Section 248 criteria.

Before applying the test, we make clear that when we adopted it in the Citizens ruling cited above, we did not *intend* to include the limitation of the test in Act 250 case law to physical changes in projects. While we did not make such a statement in that ruling, we do so now.

In this regard, the Board agrees with DPS, New Haven and CLF that the rationale for such a limitation does not apply to § 248 review. In contrast to Act 250, regulation by the Public Service Board encompasses not only the physical characteristics and impacts of utility projects but also economic regulation of the utilities. See, e.g., 30 V.S.A. §§ 107, 108, 218, 225. Section 248 itself addresses both the physical impacts of a project and the project's costs. See, e.g., 30 V.S.A. § 248(b)(1)-(5).

We also reject VELCO's argument that use of the "substantial change" test constitutes unlawful rulemaking. We are using that test as an analogy to provide guidance in interpreting § 248 to determine when an amendment to a CPG issued under that statute would be required. If we followed VELCO's argument, it would lead to irrational results. See Will v. Mill Condominium Owners' Assoc., 2004 VT 22 ¶ 15, 176 Vt. 380, 387-88 (2004) (Court presumes legislature did not intend an interpretation that would lead to absurd or irrational consequences). Under that argument, without a rule stating otherwise, *all* changes to approved projects under § 248 would require CPG amendments, even if there was no specific condition prohibiting the change and it was otherwise inconsequential. The General Assembly cannot have intended such a result. As stated in In re Petition of Vicon Recovery Systems, Inc., Docket No. 4813-A, Order of 3/23/87 at 3, incorp'd. into Final Order of 12/16/87 at 2, 53:

[A] certificate for a given facility confers no authority to construct a different one. But the difficulties lie in questions of degree. Virtually any large construction project will undergo some changes in design as construction progresses. It cannot be presumed that the authors of Section 248 were unaware of this fact. Changes which are inconsequential with respect to Section 248 criteria, therefore, should not result in invalidity of the certificate. The issue thus becomes whether the changes in the Vicon facility's design are substantial by this standard.

Accordingly, consistent with the purposes of Section 248, we may decline to require a permit amendment if a change in a certificated project does not have the potential for significant impact under the Section 248 criteria. Conversely, we may require an amendment if the project changes such that it has the potential for significant impact under those criteria.

Separately, because VRCP 60 would continue to apply, VELCO fails in its argument that the Board is somehow rescinding that rule without following rulemaking procedures.

Turning to the application of the "substantial change" test, the Board stresses that the standard is not simply the potential for impact under the statutory criteria, but rather the potential for *significant* impact under those criteria. In re Barlow, 160 Vt. 513, 522 (1993). Thus, it is not simply whether the increase in estimated costs is significant, but rather the significance of the *impact* of the increase.

The Board concludes that the increase in estimated cost does not have the potential for significant impact under § 248(b)(2) (need) because the increase in no way enables the ARCs to be delivered in a timely manner. We previously found that they cannot be so implemented. Order of 1/28/05 at 52-3. In addition, the increase does not render transmission-only alternatives to the NRP more able to overcome the non-capital cost reasons why we rejected them previously. Nor does it render them more cost-effective than the NRP, since the same factors that have driven costs

up for the NRP would increase costs at the same rate for those alternatives.

The Board also concludes that the increase does not have the potential for significant impact under § 248(b)(4) (economic benefit) or on the general good of the state under § 248(a) for the same reasons as with § 248(b)(2). In addition, the significance of the increase's potential impact under those criteria is substantially reduced by the likelihood of regional cost sharing for the NRP.

The Board further concludes that the increase does not have the potential for significant impact under § 248(b)(5) (aesthetics, health, natural resources) on our decision not to bury the 115 kV line crossing at Route 17 in New Haven. The only impact the increase would have on that decision is to confirm it. In this regard, the same factors that result in the increase also affect the cost of underground transmission construction and therefore would render such construction at the Route 17 crossing even more expensive than when we first considered it. However, the aesthetic impacts of the line crossing in that location would remain the same. Thus, if anything, the balance is tilted further against burial at the Route 17 crossing.

In the alternative, we agree with the Department that we could not simply limit any consideration of costly aesthetic mitigation to burial at the New Haven crossing. If the Board were to re-open aesthetics as a result of the cost increase, the Board would need to re-examine all costly aesthetic mitigation required for the project, since it is likely that all such mitigation is more expensive than originally thought. For example, as found above, the upward bound of the estimated incremental cost for relocating the New Haven substation has increased from \$2.3 million at the time of the proceeding to \$5 million today.

V. **Conclusion**

Based on the foregoing, the Board declines to reopen this proceeding. The motions filed by CLF and New Haven on or about September 1, 2005 are denied.

Dated at Montpelier, Vermont this 16<sup>th</sup> day of September, 2005.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

By: \_\_\_\_\_  
Aaron Adler, Special Counsel